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# Supreme Court of the United States

OCTOBER TERM, 1949.

No. 203

REGINALD CRANE, *Petitioner*,

v.

THE PEOPLE OF THE STATE OF MICHIGAN.

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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# Supreme Court of the United States

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No.

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REGINALD CRANE, *Petitioner,*

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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### OPINIONS BELOW.

The opinions of the Michigan Circuit Court (R. 8-18, 19-22) are not reported. The opinion of the Supreme Court of Michigan (R. ff. 55) is reported at 323 Mich. 646, 652, 36 N. W. (2d) 170. The dissenting opinion of two justices of the Supreme Court of Michigan (R. ff. 55) is reported at 323 Mich. 647, 36 N. W. (2d) 175.

### JURISDICTION.

The judgment of the Supreme Court of Michigan was entered February 28, 1949 (R. ff. 55). On May 21, 1949, an order of a Justice of this Court was entered extending the time for filing a petition for a writ of certiorari to

and including July 20, 1949. Jurisdiction of this Court is invoked under 28 U. S. Code § 1257(3).

## QUESTION PRESENTED.

Whether the due process of law guaranteed by the Fourteenth Amendment is denied by a sentence to substantial imprisonment predicated upon a plea of guilty to a felony, such plea having been procured by a written agreement between a state police officer and petitioner whereby petitioner agreed to confess to many crimes, including the one for which he was sentenced, in return for which the police officer agreed (1) to charge petitioner as a first offender only, and (2) to refrain from charging petitioner with numerous other crimes.

## CONSTITUTIONAL PROVISION INVOLVED.

The Fourteenth Amendment provides in part, "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *".

## STATEMENT.

Petitioner was arrested on March 1, 1943 for drunken driving. He was taken to the jail in Battle Creek (Calhoun County), Michigan, and because of failure to pay the fine assessed, he was remanded for seventy-eight to eighty days to the jail at Marshall (Calhoun County), Michigan. During the afternoon of March 1, 1943, petitioner was visited and questioned at the Marshall jail by two state police officers who said they were from Kalamazoo, Michigan. Later, on the same day, either in the afternoon or early in the evening, Victor Beck, a sergeant detective of the Michigan State Police, visited petitioner at the Marshall jail and questioned him about certain unsolved crimes. At this time petitioner was still under the influence of liquor, having been on a prolonged "drunk", and was sick from the effects of a long illness from tuber-

culosis. According to petitioner's testimony, he was vomiting and suffering from some hemorrhages (R. 25, Mich. Sup. Ct. Op. R. ff. 55, 36 N. W. (2d) 175).

The next day Beck returned and further questioned petitioner, an agreement ultimately being reached that petitioner would "make and sign a written statement regarding his recent crimes" and would plead guilty to one of such crimes, to-wit, breaking and entering, nighttime, first offense, in return for which Beck agreed that petitioner would be charged only with this one offense and as a first offender. Beck procured Clyde Cortright as a witness to this agreement because Cortright was one of the few persons petitioner knew in Marshall. During the evening the agreement was executed by Beck, witnessed by Cortright, and Beck gave the agreement to petitioner (R. 26-29, Mich. Sup. Ct. Op. R. ff. 55, 36 N. W. (2d) 175). The agreement reads as follows:

SHERIFF'S DEPARTMENT

Undersheriff Raymond Russell
Sheriff Fred Hollingsworth

March 2, 1943.

I, Victor Beck, detective with the Michigan State Police of Paw Paw, Michigan, agree to and with Reginald Crane, if he will make and sign a written statement regarding his recent crimes that Reginald Crane will be charged with and brought into Court upon one (1) charge only, and will be arraigned on a charge of B and E nite time, first offense.

In the presence of
(Signed) Clyde Cortright
Attorney at Law
Marshall, Michigan

(Signed) VICTOR BECK,
Det. #4, Fifth Dist.
Office, Mich. State Police
(R. 13, 29).

The coercion exercised on petitioner during the course of the negotiations between him and Beck is summarized in the dissenting opinion in the Michigan Supreme Court,

in the statement of facts of which the majority opinion fully concurs, in the following words:

> "* * * When the officer questioned Crane he said to him, according to Crane, 'you got enough record, past record, I could hang a murder on you and convict you,' to which Crane claimed he replied, 'Well, I don't know what you mean, I haven't killed anyone.' The officer then said, 'I didn't say you had, but you have enough past record I could hang anything on you and make it stick.' " (Dissenting Op., R. ff. 55, 36 N. W. (2d) 175).

After the above-quoted agreement was executed and delivered, Beck told petitioner that because of petitioner's condition, mental and physical, petitioner ought to be sent to a hospital; that in Beck's opinion petitioner could not be convicted of having any intent to commit a crime; that if petitioner pleaded guilty he would be given a suspended sentence; and that Beck would suggest his examination by a sanity commission (R. 30).

After the agreement was executed and delivered Beck indicated to petitioner that he would take him to Benton Harbor (Berrien County), Michigan, the principal city of the county wherein the offense to which petitioner had promised to plead guilty allegedly had been committed. Later that same evening Beck and petitioner commenced the trip to Benton Harbor but Beck took petitioner only as far as Paw Paw, Michigan, and at Paw Paw Sheriff Hastings of Berrien County and another man took custody of petitioner, apparently early on March 3, 1943, and brought petitioner to Benton Harbor (R. 29-31). Petitioner was held in jail at Benton Harbor from March 3 until March 6, 1943, and according to petitioner was given no food from the morning of March 3 to March 6 except for a cup of coffee and a doughnut (R. 31). On March 6, 1943, petitioner was taken before Municipal Judge Hammond in Benton Harbor. On this occasion the complaint and warrant against petitioner were first signed and peti-

tioner, who waived examination, was bound over to Circuit Court and remanded to jail in Benton Harbor because he did not produce the required $2,500 bond (R. 15, 32-33).

Some time after March 6, 1943, petitioner gave a "statement of crimes" to Deputy Sheriff Kubath of Berrien County, which crimes, according to petitioner, were entirely fabricated, had never been committed, and were related solely to fulfill petitioner's obligation and commitment under the above-quoted contract with Victor Beck (R. 37-38, 49-53).

Petitioner was kept in jail until March 29, 1943, at which time he was arraigned before Circuit Judge Evans and, pursuant to his agreement with Beck, pleaded guilty to the crime of breaking and entering in the nighttime (R. 5-7, 33-34). After a pre-sentence investigation and an unreported interview with Circuit Judge Evans in chambers, petitioner was sentenced on April 16, 1943 to a term of seven to fifteen years imprisonment (R. 8, 17, 34-35).

At no time during any of the proceedings mentioned above did petitioner have counsel, nor at any time was counsel offered him, the Michigan Circuit Court relying upon the then existent Michigan rule that a prisoner is not entitled to have counsel appointed in order to advise him as to his plea (R. 11).

On March 17, 1944, petitioner, still appearing in his own behalf, filed a motion for leave to withdraw his plea of guilty and to file a motion for a new trial.[1] This motion was based upon petitioner's constitutional claim that he had been deprived of counsel and that his plea of guilty had been involuntary (R. 8). Petitioner supported his motion with a photostatic copy of the Victor Beck agreement,

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[1] Such procedure is concededly the correct technique in Michigan by which to raise the constitutional questions, a Circuit judge having power to order a new trial in a criminal case upon proper showing, without limitation of time. See *People* v. *Hurwich*, 259 Mich. 361, 367, 243 N. W. 230, 232; *People* v. *Burnstein*, 261 Mich. 534, 542, 246 N. W. 217, 219; *People* v. *Crane*, R. ff. 55, 323 Mich. 646, 659, 36 N. W. (2d) 170.

and with an affidavit of L. Roy Clemens, secretary of the Theisen-Clemens Company at Bay City, Michigan, swearing to the fact that petitioner had been in the Company's employ at Bay City, Michigan, at the time of the offense to which petitioner had pleaded guilty (R. 35-36), the import of which was that petitioner could not have committed the alleged crime (R. 11-13).

On March 27, 1944, Circuit Judge Evans denied petitioner's motion in an opinion holding that the Beck agreement "did not require him (Crane) to confess guilt" (R. 14; Dissenting Op. R. ff. 55; 36 N. W. (2d) 175).

On June 30, 1947, attorney George S. Keller entered his appearance for petitioner and petitioner was for the first time represented by counsel. Petitioner's counsel filed a motion on behalf of petitioner similar to the above-mentioned motion, and also petitioned for a writ of habeas corpus, and a hearing was held before Circuit Judge Westin, Judge Evans' successor (Judge Evans having died in the meantime) on July 21, 1947 (R. 24-54). At this hearing the People were represented by the county attorney; and petitioner, the county attorney who had originally arraigned petitioner, and Sheriff Kubath, who had formerly been deputy sheriff, testified. The People failed to call Detective Sergeant Victor Beck, although he could have been produced (R. 53).

None of the facts stated in this Statement were denied at the hearing on July 21, 1947. While certain of the details in this Statement appear from petitioner's testimony at such hearing, all of the basic facts, including the Victor Beck agreement and Judge Evans' knowledge thereof, are established independently of petitioner's testimony, are conceded by the People, and are assumed in both opinions in the Michigan Supreme Court (R. ff. 55, 36 N. W. (2d) 170, 175).

On August 1, 1947, Judge Westin denied petitioner's motion with an opinion which in substance incorporates by reference the earlier opinion of Judge Evans (R. 19-22).

Petitioner appealed by permission to the Michigan Supreme Court, where the Circuit Court's denial of his motion was affirmed on February 28, 1949, the Chief Justice and one Associate Justice dissenting in an opinion setting forth a statement of the facts, in which statement the majority of the Court concur (R. ff. 55, 36 N. W. (2d) 170 at 170, 175).

## MANNER IN WHICH FEDERAL QUESTION WAS RAISED.

The federal question here presented, namely, whether petitioner's plea of guilty was involuntarily and hence violative of due process, has been raised throughout all of the aforementioned proceedings in the Michigan courts, commencing with petitioner's motion of March 17, 1944 for leave to withdraw the plea of guilty and for a new trial (R. 8, 19). This motion was denied on the grounds that the plea of guilty was voluntary (R. 18). Petitioner's second motion, made June 30, 1947 was denied on the same grounds (R. 22). The two Circuit judges who decided said motions concluded that petitioner had not been denied any "constitutional rights or privileges" (R. 21).

In petitioner's assignment of errors in the Michigan Supreme Court, his claim of denial of due process was expressly predicated upon the Federal Constitution (R. 3). The opinion of the Michigan Supreme Court shows clearly that the federal constitutional question of an involuntary plea was considered and decided adversely to petitioner:

> "Two meritorious questions are discussed in defendant's brief: (1) Was defendant's plea of guilty 'made freely, with full knowledge of the nature of the accusation, and without undue influence * * *' ". (R. ff. 55, 36 N. W. (2d) 170).

## SPECIFICATION OF ERRORS TO BE URGED.

The Michigan Supreme Court erred:

1. In holding that petitioner freely and voluntarily pleaded guilty to the offense with which he was charged.

2. In failing to hold that petitioner was denied the due process of law guaranteed by the Fourteenth Amendment.

3. In affirming the order of the Circuit Court denying petitioner's motion for leave to withdraw the plea of guilty and to file a motion for a new trial.

## REASONS FOR GRANTING THE WRIT.

### I. The decision of the Michigan Supreme Court on a federal question of substance is in conflict with decisions of this Court.

A. *Petitioner's plea was involuntary and violative of due process.*

The conclusion reached by the Michigan Supreme Court is in conflict with principles repeatedly enunciated by this Court.

Petitioner is now under sentence of seven to fifteen years imprisonment for a serious felony. This sentence was imposed after petitioner pleaded guilty, pursuant to an agreement between petitioner and an official of the Michigan State Police, whereby petitioner was to confess to a number of crimes, including the one for which he was sentenced, and in turn the prosecution was to limit itself to one charge and treat petitioner as a first offender. This agreement or "horse trade", as the dissenting opinion characterized it (R. ff. 55, 36 N. W. (2d) 176), was reduced to writing, signed by the police officer and witnessed. All of this is conceded.

Was such plea of guilty involuntary and hence violative of due process?

Use at a trial of a coerced confession is violative of due process, *Brown* v. *Mississippi*, 297 U. S. 278; *Chambers* v. *Florida*, 309 U. S. 227; *Ward* v. *Texas*, 316 U. S. 547; *Ashcraft* v. *Tennessee*, 322 U. S. 143; 327 U. S. 274; *Malinski* v. *New York*, 324 U. S. 401; *Haley* v. *Ohio*, 332 U. S. 596; *Watts* v. *Indiana*, October Term 1948, decided June 27, 1949; *Harris* v. *South Carolina*, October Term 1948, decided June 27, 1949; *Turner* v. *Pennsylvania*, October Term 1948, decided June 27, 1949; cf. *Lisenba* v. *California*, 314 U. S. 219. A coerced plea of guilty stands on the same footing as a coerced confession introduced at trial and is equally violative of due process if thereby made the basis of conviction. *Chambers* v. *Florida*, 309 U. S. 227; cf. *Waley* v. *Johnston*, 316 U. S. 101, 104; *Smith* v. *O'Grady*, 312 U. S. 329; *Von Moltke* v. *Gillies*, 332 U. S. 708, 728.

Whatever the constitutional criterion applied to the case at bar to test the plea's reconcilability with due process—whether that stated in *Lisenba* v. *California, supra*, "• • • to prevent fundamental unfairness in the use of evidence whether true or false", or that stated in a separate opinion in *Watts* v. *Indiana, supra*, and companion cases, which would bar coerced confessions as untrustworthy—it is obvious that the plea of guilty was here wrung from petitioner by a device which renders it involuntary and violative of due process.

When the agreement or "horse trade" was made from which the guilty plea stemmed, petitioner was without counsel, serving a sentence in jail, apparently seriously ill and still under the influence of intoxicants. Even if all of petitioner's testimony be ignored (although such testimony is uncontradicted) and consideration be confined to the conceded written agreement between Police Officer Beck and petitioner, the conclusion is compelled that the coercion inherent in such agreement produced a plea violative of due process:

1. Petitioner was accused by Beck of numerous crimes. Thus the written agreement provided that petitioner would make and sign a "written statement regarding his recent *crimes*" (italics added) and that, in consideration of his making such a statement, petitioner would be "brought into court upon one (1) charge only".

2. Both Beck and petitioner were well aware that proof of three or more previous convictions for felonies and conviction of the felony here involved could send petitioner to prison for life, under Michigan's habitual criminal act.[2] Thus the written agreement stipulated for one charge, namely, "B and E nite time, *first offense.*" (italics added).

3. Police Officer Beck made the contract or "horse trade" purporting to act in his official capacity: "I, Victor Beck, detective with the Michigan State Police • • • (Signed) Victor Beck, Detective #4, Fifth Dist. Office, Mich. State Police".

It is therefore clear that potent coercive forces were utilized by Michigan to compel petitioner to make the "horse trade". Judge Evans himself conceded this when, in denying petitioner's motion of March 17, 1944, he said that petitioner "had abundant reasons for fearing that he might be charged other than as a first offender" (R. 15).

It is true that the prosecution in a sense lived up to Beck's bargain or "horse trade". This, however, is merely confirmatory of the fact that the operative effect of the coercion continued from the time the "horse trade" was entered into up to and including the time petitioner pleaded guilty.

Even though petitioner had been through judicial criminal processes before, it should be noted that nothing in his previous experience would mitigate the coercive factors, inducing him to make a plea of guilty whether guilty or not, brought to bear against him by Michigan. Indeed, all of his experience and the education derived therefrom

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[2] Mich. Stat. Ann. 28.1084.

enhanced the compulsion inherent in the situation. Beck's threat that he "could hang a murder on you and convict you (petitioner)" was not a hollow one to petitioner. The truth is that petitioner was uniquely subject to the type of "horse trade" that was imposed upon him. We respectfully submit that it is naive and unrealistic to view this "horse trade" in any other light than that of a coerced plea.

B. *Michigan failed to give the required constitutional significance to acknowledged facts.*

While the minority opinion analyzes the coercive effect of the "horse trade" and attributes to it the required legal consequence of involuntariness, the majority opinion, apparently likewise assuming coercion in the "horse trade", attempts to minimize the significance of such coercion by stating factors which really enhance, rather than minimize, the coercion's effects (Mich. Sup. Ct. Op., R. ff. 55, 36 N. W. (2d) 174-175). Below are quoted such factors, with analyses thereof:

(1) "• • • the utter lack of any showing that anyone urged [petitioner] to plead guilty or asked him to do anything other than make a written statement; • • •"

But thus to distinguish between the "written statement" and the plea of guilty is only to play with words. The written statement included the offense involved and produced the plea.

(2) "• • • [petitioner] had had much previous court experience; • • •"

But, as noted, such previous experience must have enhanced petitioner's realization of his dependency upon Beck, thereby necessarily increasing petitioner's susceptibility to the "horse trade".

(3) "• • • the convincing proofs of [petitioner's] guilt; • • •"

These "convincing proofs" consisted of nothing but recitals by Judge Evans as to what he had learned, *after* the plea had been entered, from the prosecuting attorney, the probation officer, and Kubath, in an *ex parte* pre-sentence investigation in which all of the "convincing proofs" were either hearsay or the fruits of the "horse trade". Thus Michigan ignores the distinction between the problem of a defendant's guilt, and the due process required to prove it.

In this connection it is to be noted that a serious error in reading the record may have materially misled the Michigan Supreme Court. Thus, the majority opinion, in attempting to negate the significance of the "horse trade" as a coercive factor inducing the plea, states that petitioner denied guilt one week after making the "horse trade" and only admitted guilt after he was confronted with stolen articles (R. ff. 55; Mich. Sup. Ct. Op., 36 N. W. (2d) 172). This is clearly erroneous; a reading of all of the testimony of People's witness Kubath shows beyond doubt that petitioner's denial of guilt to Kubath was made before the "horse trade" and that at no time after the "horse trade" up to the time of sentence did petitioner ever again deny guilt (R. 47-53).

(4) "• • • the trial judge's private conference with [petitioner]; • • •"

At the time of this conference the plea of guilty had already been entered; the "horse trade" had already produced the plea.

(5) "• • • the lapse of time between Beck's promise to [petitioner] and his ultimate confession and between that confession and • • • arraignment • • • and sentence; • • •" "• • • [petitioner's] lack of protests or objections; • • •"

But it is obvious that the "horse trade" was a continuing bargain; its coercion operated from its inception until it produced the results it contemplated, a guilty plea.

In contrast to the majority's opinion, the dissenting opinion, concurred in by two justices, clearly differentiates questions of guilt from those of voluntariness of the plea, and attributes to the "horse trade" the coerciveness that renders the plea violative of due process. In the language of the dissenting opinion:

> "* * * We are unable to agree with the sentencing judge's characterization of the Beck written statement. Nor can this Court, in the light of the undisputed testimony with respect to this statement, place its stamp of judicial approval upon the methods employed by the officers involved since they undoubtedly contributed to Crane's plea of guilty. The proper administration of justice and regard for the dignity of the individual before the bar of justice forbids the determination of guilt or innocence by 'horsetrading' methods." (R. ff. 55, 36 N. W. (2d) 176).

**II. If no decision of this Court precisely controls the instant case, the Michigan Supreme Court has decided a federal question of substance not theretofore determined by this Court.**

If none of the decisions of this Court precisely controls the instant situation, then it is respectfully submitted that the problem presented is a federal question of substance not yet determined by this Court. We submit that the above-quoted language of the dissenting opinion is alone sufficient to indicate the substantiality of this federal question.

The importance of such question from the standpoint of public policy need not be labored in view of the solicitude of this Court for the preservation of the fundamentals of due process. The proper solution of this and similar due process questions is basic to the orderly and decent ad-

ministration of justice—an essential pillar of our free society.

## CONCLUSION.

Wherefore, it is respectfully requested that this petition for a writ of certiorari to the Supreme Court of Michigan be granted.

Respectfully submitted,

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Dated: Washington, D. C.
July, 1949.

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REGINALD CRANE, *Petitioner*,

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THE PEOPLE OF THE STATE OF MICHIGAN.

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## BRIEF OPPOSING PETITION FOR CERTIORARI.

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## BRIEF OPPOSING PETITION FOR CERTIORARI.

### I

### Opinions Below[*]

Counsel is correct: the opinion (8-18) of the trial judge, who deceased, and the opinion (19-22) of his successor, denying the petitioner's motion to vacate plea and sentence, are not published. The opinion of the court below (56-64) is reported as *People v. Crane*, 323 Mich. 646, at 652-662, 36 NW 2d 170-174, while the opinion of the dissenting justices appears in 323 Mich. 647-652, 36 NW 2d 175-177.[1]

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[*]

Unless otherwise plainly indicated, numbers in parentheses refer to pages of the printed record.

[1]

Under Michigan practice, causes on appeal are assigned to one of the justices upon submission and no vote is taken until his opinion has been written. Consequently, that opinion, whether prevailing or dissenting, is first published in the reports.

## II

### Counter-Statement on Jurisdiction

We concede, of course, that the jurisdiction of this Court was timely invoked under 28 U.S.C. § 1257 (3). Whether the Court should exercise such jurisdiction and issue the writ depends largely, we assume, upon the substance or lack of substance in the petitioner's claim of denial of due process of law in connection with his plea of guilty.

Briefly it is our position that petitioner's claim lacks substance and that the trial court as well as the court below disposed of the matter in deciding issues of fact within their exclusive province, i.e., that as a matter of fact the petitioner failed to establish that his plea of guilty was coerced.[2]

## III

### Question Presented

The question as stated by counsel seems to us oversimplified, and it rests on premises we cannot accept. In the court below, as appears from the majority opinion (56), 323 Mich. 652, one of two meritorious questions discussed in defendant's (petitioner here) brief, was whether his plea of guilty was as a matter of fact, "made freely, with full knowledge of the nature of the accusation, and without undue influence", and the court below, after reviewing the facts found by two circuit judges, held (1) that the defendant,

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[2] Both the trial judge, his successor, and the court below rejected the credibility of the petitioner as a witness.

" 'to put it mildly, is not to be trusted to tell the truth whenever it will conflict with his own purposes and desires' ", (2) that the defendant did not act under compulsion of the agreement with the State police officer or under any undue influence other than that of his knowledge that he was guilty and that the officers had the proofs, 323 Mich. 657-658, and (3) that the plea was freely and voluntarily made, 323 Mich. 662. And the Court found many other detailed facts, as distinguished from such conclusions, which substantiated their findings.

Adding such factors to the question as defined by petitioner's counsel, we think it might be stated as follows:[3]

> Whether in view of the findings of fact made by the courts of Michigan in this cause, and in the light of all the surrounding facts and circumstances disclosed by the record, must it be said as a matter of law that the petitioner was denied due process of law guaranteed by the Fourteenth Amendment in that his plea of guilty to a charge of crime punishable by imprisonment, was involuntary, obtained by undue influence, coerced, and procured by a written agreement between a state police officer and the petitioner 28 days before arraignment and plea of guilty to such offense, under the express terms of which agreement (29) the police officer agreed to and with the petitioner that if he would make and sign a written statement regarding his recent crimes he would be charged with and brought into court upon one charge only, and he would be arraigned on a charge of breaking and entering in the nighttime.

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[3]

The Court will realize, of course, the difficulty encountered in attempting to include in the statement of such a question, all of the premises.

## IV

### Counter-Statement of the Case

We respectfully note, Supreme Court Rule No. 27, the following inaccuracies and insufficiencies in petitioner's statement:

1. We would first correct an impression left by counsel's statement in the third paragraph, page 5, of the petition, to the effect that "at no time during any of the proceedings mentioned above did petitioner have counsel, nor at any time was counsel offered him, the Michigan circuit court relying upon the then existent Michigan rule that a prisoner is not entitled to have counsel appointed in order to advise him as to his plea" (11). The question of denial of the aid of counsel, was not raised in the Supreme Court of Michigan, nor was it decided on review.[4]

2. It is said, petition, p. 3, that an agreement was ultimately reached that petitioner "would 'make and sign a written statement regarding his recent crimes' and would plead guilty to one of such crimes, to wit, breaking and entering, nighttime, first offense, in return for which Beck (the police officer) agreed that petitioner would be charged only with this one offense and as a first offender". The written agreement (29) is not signed by the petitioner, is signed only by the detective, and does not mention a plea of guilty.

3. Numerous statements are made on pp. 4-5 of the petition based on the testimony (24-42) of the petitioner, ac-

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[4] This also applies to several statements to the effect that the petitioner did not have counsel.

cepted by counsel as true and at its face value. But the circuit judge and the Supreme Court of Michigan, upon reading or hearing such testimony, were convinced (21, 60) that " . . the respondent, to put it mildly, is not to be trusted to tell the truth whenever it will conflict with his own purposes or desires". Apparently the Supreme Court was of the opinion (59), 323 Mich. 655-656, that petitioner testified too much, that since he accused every officer, prosecutor and judge connected with his case, he was not a credible witness and could not be believed.

**4.** To the petitioner's statement should be added the following, which we believe substantially correct, taken from the State's brief filed in the court below:[5]

In October, 1942, defendant, (according to his admissions to a deputy sheriff) together with his little boy, broke and entered in the nighttime a Phillips 66 filling station in the Village of Watervliet (5, 48, 49), and stole therefrom a cash register, auto batteries and money (5, 49). On March 1, 1943, defendant was arrested and sentenced to jail on a charge of drunk driving at Marshall, Michigan (25). Deputy Sheriff Kubath of Berrien County, who had been investigating the breaking and entering at Watervliet, learned of defendant's apprehension and detention at Marshall and went there to question defendant concerning the Watervliet breaking and entering (49). In the course of this interview defendant first denied his guilt but upon being confronted with the articles stolen, admitted the offense to Deputy Sheriff Kubath (49). Thereafter the Marshall authorities turned defendant over to the Berrien County Sheriff and defendant on March 6, 1943, was taken

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[5]

A great deal of the statement, of course, is based upon admissions said to have been made by the petitioner to the deputy sheriff, as related by the latter in his testimony (47-53).

before Municipal Judge Frank Hammond of Benton Harbor, on a complaint and warrant charging breaking and entering in the nighttime (7), whereupon defendant waived examination and was bound over to circuit court (7) and remanded to the Berrien county jail in lieu of bail (7).

While in the Berrien county jail defendant gave a statement to the Berrien County officers (not to Victor Beck) which was taken in question and answer form by the official county stenographer (14) in which he admitted a series of breaking and enterings in Texas, Michigan, Colorado, Iowa and Indiana (14, 15). In addition to these admitted offenses, defendant's record showed that in 1926 he was sentenced for one to ten years for unlawfully driving away an automobile; in 1930 at Jackson, Michigan he was sentenced to 5 to 14 years for forgery; in 1935 in Oklahoma he was sentenced to 3½ years for forgery, second degree; in 1937 at Jackson, Michigan, he was sentenced to 7½ to 16 years for escaping prison; and in 1940 at Marquette Michigan, he was sentenced to 3 to 6 years for escaping prison (15).

The record is bare of any evidence indicating that Detective Victor Beck of the Michigan state police had any contact with defendant after defendant was turned over to the Berrien County officers.

On March 29, 1943 defendant was arraigned in Berrien county circuit court and tendered a plea of guilty which was received and thereupon he was remanded to the county jail to await sentence (6). Thereafter an investigation and thorough report of defendant's case was made by the probation officer (17). After this Judge Evans conferred privately with defendant to assure himself that the defendant's plea was knowingly and freely made (17), and also Judge Evans held a presentence conference with the

probation officer, the prosecuting attorney and a representative of the sheriff's office (17). On April 16, 1943, 18 days after defendant's arraignment and plea of guilty, Judge Evans imposed sentence (8).

Approximately one year later, on March 17, 1944, defendant asked leave to withdraw his plea of guilty and proffered a motion for a new trial (8).

## V

### Manner in Which Federal Question Raised

We do not choose to quibble over the fact that the federal question was raised in the Michigan courts, *viz.*, whether petitioner's plea of guilty was involuntary and hence violative of due process, though we do feel that this Court should accept the lower's courts finding of evidentiary facts, as distinguished from their conclusions of law.[6]

## VI

### Reasons for Denying Writ

We agree that the question presented is controlled by decisions of this Court cited in petitioner's brief, p. 9, among others the following recent cases,

*Watts v. Indiana,* 338 U.S. 47;

*Harris v. South Carolina,* 338 U.S. 68;

*Turner v. Pennsylvania,* 338 U.S. 62.

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[6] Watts v. Indiana, 338 U.S. 47, 49, 50-51.

The reasons for denying a writ of certiorari are, we respectfully submit, those assigned by the Michigan Supreme Court, 323 Mich. 652-662, in its prevailing opinion, for affirming the order of the circuit court denying petitioner's motion for leave to withdraw plea of guilty and to file motion for new trial.

Such reasons are so clearly enumerated that to repeat them here would merely add to the burden of the Court. So for the present we stand upon the opinion of the Michigan Supreme Court, which sums the matter up (64), 323 Mich. 661-662, as follows:

> "Thus, in the instant case, the utter lack of any showing that anyone urged defendant to plead guilty or asked him to do anything other than make a written statement concerning his recent crimes, the fact that defendant had had much previous court experience and that he insisted that the figures in the information be changed, his expressed desire to make restitution, the convincing proofs of defendant's guilt of the offense charged, the trial judge's private conference with defendant and assurance therefrom that the plea was freely and voluntarily made, the lapse of time between Beck's promise to defendant and his ultimate confession to the sheriff and between that confession and his circuit court arraignment and between arraignment and sentence, and the lack of protests or objections by defendant during the 5-week period between confession and sentence, convince us that the trial judge was justified in concluding that the plea of guilty was freely and voluntarily made, and that it was not an abuse of discretion to deny defendant's motion."

We agree that the record in this cause presents novel questions some of which may not have been decided by this

Court, and of course it is for this Court to say in their discretion whether they should be decided now.

Mr. Justice Frankfurter, announcing the judgment of the Court in *Watts v. Indiana, supra,* 338 U.S. 49, 50, had this to say:

> "On review here of State convictions, all those matters which are usually termed issues of facts are for conclusive determination by the State courts and are not open for consideration by this Court. Observance of this restriction in our review of State courts calls for the utmost scruple. But "issue of fact" is a coat of many colors. It does not cover a conclusion drawn from uncontroverted happenings. When that conclusion incorporates standards of conduct or criteria for judgment which in themselves are decisive of constitutional rights. Such standards and criteria, measured against the requirements drawn from constitutional provisions, and their proper applications, are issues for this Court's adjudication. . ."

We are frankly puzzled to know whether the foregoing principle applies to the credibility of witnesses whose testimony has been rejected by State courts.

In the case at bar the circuit judge and the Supreme Court agreed that the petitioner could not be believed, partly because the story he told on the stand was too weird to be given credence. The circuit judge had opportunity to observe the demeanor of this witness, his candor or lack of frankness, and he concluded he could not accept his fantastic tale, which was to the effect that the law-enforcing officers of the State having to do with his case, the state policeman, the deputy sheriff who arrested him, the justice of the peace, the prosecuting attorney, not to mention the

trial judge, had entered into a conspiracy to deprive him of his constitutional right to due process when accused of a criminal offense.

Without show of authority, but relying somewhat on common sense, we would respectfully submit that when a State court in good faith makes such a finding, this Court should sustain it.

## VII

### Conclusion

We, therefore, respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

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